

HOUSE BILL 440
By Fowlkes

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 9,
relative to continuation statements under Article 9 of the
Uniform Commercial Code.

WHEREAS, Tennessee Code Annotated Section 47-9-403, with respect to the duration
of financing statements under Article 9 of the Uniform Commercial Code as adopted in
Tennessee (Tennessee Code Annotated, Title 47, Chapter 9) was amended by 1996 Public Act
1073; and

WHEREAS, certain clarifying and technical changes to Tennessee Code Annotated,
Section 47-9-403, are advisable to clarify the effect of such amendment; and

WHEREAS, it is the desire of the Tennessee General Assembly to clarify Tennessee
Code Annotated, Section 47-9-403, as so amended; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-9-403, is amended by deleting
subsection (2) in its entirety and by substituting instead the following:

(2) (a) A filed financing statement that states a maturity date of more than five (5)
years but not more than twenty (20) years is effective until such maturity date, subject to
subsection 2(e) below.

(b) A filed financing statement that states that the obligations secured payable on
demand is effective for five (5) years from the date of filing, subject to subsection 2(e)
below.

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(c) Except as provided in subsection (2)(a) or (b) or in subsection 2(6), a filed financing statement is effective for five (5) years from the date of filing, subject to subsection 2(e) below.

(d) If a security interest perfected by filing exists and if the filing of a continuation statement is enjoined or otherwise stayed in insolvency proceedings commenced by or against the debtor, the security interest shall be deemed perfected until the termination of the injunction or stay and thereafter for a period of sixty (60) days even if the filing has lapsed and the financing statement removed from the files or until the expiration of the applicable effective filing period as determined under subdivision (2)(a), (b) or (c), whichever occurs later, subject to subsection 2(e) below.

(e) The effectiveness of a filed financing statement lapses on the expiration of the applicable effective filing period as determined under subdivision (2)(a), (b), (c) or (d), unless a continuation statement is filed prior to the lapse or is otherwise timely filed. A continuation statement filed within the sixty (60) days after the end of the effective period stated in subsection 2(a), 2(b), or 2(c) shall be retroactively effective and shall continue to security interest for another five (5) years from the last date to which the previous filing was effective. Upon lapse, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who becomes a purchaser or lien creditor before lapse.

SECTION 2. Tennessee Code annotated, Section 47-9-403, is further amended by deleting the first two sentences of subsection (3) and by substituting instead the following:

(3) A continuation statement may be filed by the secured party at any time during the last six (6) months that the financing statement or previous continuation statement is effective and will be retroactively effective if filed during the sixty (60) days immediately

following the end of the effective period of the previous financing statement or continuation statement. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the previous filing was effective.

SECTION 3. Tennessee Code Annotated, Section 47-9-403, is further amended by adding as a new subsection (10), the following:

(10) (a) The provisions of subsections (2) and (3) of this section, as amended by [this amendment], effective as of [the effective date of this amendment], apply to all financing statements filed on or after [the effective date of this amendment], and to all financing statements filed before [the effective date of this amendment] for which continuation statements were not filed on or before such date.

(b) The provisions of subsections (2) and (3) of this section, as amended by [this amendment], shall apply to each financing statement filed before [the effective date of this amendment] for which one or more continuation statements were filed on or before [the effective date of this amendment], by making such financing statement effective for successive effective filing periods of five (5) years each, starting from the date of the original filing; provided however, that all continuation statements filed before [the effective date of the amendment] shall be deemed to have been timely filed if they were filed within the six (6) months before or the sixty (60) days after the expiration of each period consisting of either (i) successive periods of five (5) years from the date of the original filing, or (ii) successive periods of five (5) years and sixty (60) days from the date of the original filing.

(c) For purposes of calculating any period stated as sixty (60) days or two (2) months (or the last two (2) months of any period stated to be eight (8) months) in the Section 47-9-403 as in effect prior to [the effective date of this amendment], such period may be calculated as sixty (60) days or as two (2) months, whichever is greater. On and

after such date, each period stated to be sixty (60) days shall be sixty (60) days. Each such period shall be extended to the next date that the applicable filing office is open for regular business if the last day of such period falls on a day when the filing office is not open for regular business.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

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